

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION**

SUNOCO, INC. (R&M)

Employer/Petitioner

and

Case 4–UC–413

ATLANTIC INDEPENDENT UNION¹

Union Involved

**REGIONAL DIRECTOR’S DECISION AND ORDER
AND CLARIFICATION OF BARGAINING UNIT**

I. INTRODUCTION

The Employer/Petitioner, Sunoco (R&M), a subsidiary of Sunoco, Inc., manufactures and distributes petroleum products and chemicals. Until about February 2002, Sunoco (R & M) operated through various business units, including a Logistics unit.² The Logistics Unit was responsible for operating two pipelines which transported petroleum products from Sunoco refineries and 35 terminals at which the products were stored pending delivery. The Logistics Unit also delivered the products by truck to retail and wholesale customers. The Union Involved, Atlantic Independent Union (AIU), has for a number of years represented a bargaining unit consisting of the “operating and clerical employees” employed at 15 of Sunoco (R & M)’s 35 terminals. The unit is comprised of Terminal Operators, Drivers, Mechanics, and Warehouse employees, all of whom worked in the Sunoco (R & M) Logistics Unit.

In February 2002, Sunoco, Inc. spun off its pipeline and terminal operations into two new companies, Sunoco Partners LLC (herein called Sunoco Partners) and Sunoco Logistics Partners LLP (herein called Sunoco Logistics). The pipelines and terminals were transferred to Sunoco Logistics. Sunoco Partners is Sunoco Logistics’ general partner and manages its business.

Following Sunoco Logistics’ acquisition of the pipelines and terminals, the Terminal Operators included in the bargaining unit were transferred to Sunoco Partners’ payroll. Sunoco (R & M) retained control over the delivery of product from the terminals, and the unit Drivers and Mechanics remained on its payroll.

¹ The name of the Union Involved was amended at the hearing.

² The other units were Retail and Marketing, Coke, Chemicals, and Refining and Supply.

The contract covering the bargaining unit expired in March 2004. After unsuccessfully attempting during negotiations for a new agreement to induce the Union Involved to accept separate contracts for the employees employed by the two companies, Sunoco (R & M) filed the unit clarification petition in this case. The petition seeks to have the bargaining unit split into two units, one encompassing the Terminal Operators and other employees employed by Sunoco Partners and the second covering the Drivers, Mechanics, and other employees who remain employed by Sunoco (R & M).

The Union Involved contended from the outset of these proceedings that the petition was not timely filed and should therefore be dismissed. Alternatively, the Union Involved argued that the petition should not be granted because Sunoco (R & M), Sunoco Logistics, and Sunoco Partners constitute a single employer and that the existing unit remains appropriate.

A Hearing Officer held a hearing in this matter, and the parties filed briefs.³ On September 7, 2005, I issued a Decision and Order dismissing the petition as untimely filed. The Employer/Petitioner sought review, which was granted by the Board. On June 16, 2006, the Board reversed my Decision, reinstated the petition, and remanded the case to me for consideration of the merits. Thereafter, I issued a Notice to Show Cause on June 23, offering the parties an opportunity to indicate whether they believed the record should be reopened to take additional evidence on the question of whether the bargaining unit should be split. After reviewing the parties' responses, I determined that the record previously developed in this case contains sufficient evidence to render a determination on the merits of the petition.⁴ Based on this record, I find that Sunoco (R&M), Sunoco Partners, and Sunoco Logistics do not constitute a single employer; that a single unit encompassing employees of Sunoco, Inc. (Sunoco R&M) and Sunoco Partners is no longer appropriate; and that the historic unit should be split into two units as requested by the petition.

In this Decision, I will first present a brief overview of the operations of Sunoco (R & M), Sunoco Partners, and Sunoco Logistics. I will then set forth the legal standards, relevant facts, and analysis concerning the issues presented.

³ The record from a representation case involving Sunoco (R & M), Sunoco Partners, Sunoco Logistics, and the Union Involved and raising some of the same issues, Case 4-RC-21006, was incorporated into the record in this case.

⁴ In its response to the Notice to Show Cause, the Union Involved contended that this case should be dismissed as moot because during recent discussions with the Employer/Petitioner, the Union Involved agreed in principle to split the unit as requested by this petition. However, the Union Involved was not willing to agree to split the unit unless the Employer/Petitioner agreed to withdraw certain unfair labor practice charges, and the Employer/Petitioner has not agreed to do so. The Union Involved takes the alternative position that the record should be reopened to take evidence as to the bargaining history between the parties since September 2005, which would purportedly support its contention that the instant petition is moot. The Employer/Petitioner contends that the matter is not moot because the parties have not resolved the issue between themselves. Neither party has requested to reopen the record to present evidence as to the merits of the petition, i.e., whether the unit should be split.

II. OVERVIEW OF OPERATIONS

Sunoco Logistics is a limited partnership with one general partner, Sunoco Partners, and a number of other partners. Sunoco Partners is a limited liability company wholly owned by subsidiaries of Sunoco, Inc. Sunoco, Inc. also owns some limited partnership shares in Sunoco Logistics, as do a number of other individuals and entities who purchased the shares in the open market. As the general partner, Sunoco Partners has sole responsibility for management of the Sunoco Logistics business. The limited partners are not involved in the management of Sunoco Logistics' operations and do not have any role in the selection of its Board of Directors.

Following its acquisition of the pipelines and terminals, Sunoco Logistics began to provide terminal storage services for entities other than Sunoco (R & M), and between five percent and eight percent of the product stored in the terminals at the time of the hearing was owned by these companies. Since the sale of the terminals to Sunoco Logistics, Sunoco (R & M) has continued to deliver its product from the terminals.

The current bargaining unit includes 117 Drivers, 24 Terminal Operators, four Mechanics, two Leadpersons, and two Warehouse employees.⁵ 23 of the Terminal Operators and one of the warehouse employees are on the Sunoco Partners payroll. The remaining unit employees work for Sunoco (R & M).

The Terminal Operators sample and test product stored at the terminals, dispense product to customers, maintain terminal equipment, and prepare reports on terminal operations. The Drivers load product at the terminals and transport it to end users. The Mechanics service the trucks used by the Drivers.

III. LEGAL STANDARDS

Sunoco (R & M) and Sunoco Partners contend that they are now separate entities. If this is true, a combined multiemployer unit would be appropriate only if all parties consented, see *Oakwood Care Center*, 343 NLRB No. 76 (2004), and the companies do not consent. The Union Involved contends, however, that Sunoco (R & M) and Sunoco Partners constitute a single employer in which case the historic bargaining unit might remain appropriate.⁶

Where two or more nominally independent entities constitute one integrated enterprise, they are deemed to be a single employer. Factors considered in determining single employer status include (1) common ownership, (2) common management, (3) centralized control of labor

⁵ As discussed below, the Sunoco (R & M) employee who is classified as a Terminal Operator does not perform Terminal Operator functions. The record does not discuss the Leadpersons or Warehouse employees, and the parties have not addressed their status separately from the other unit employees.

⁶ A single employer finding would not, however, be determinative. Even if Sunoco (R & M) and Sunoco Partners are a single employer, the reorganization resulting from the transfer of Sunoco (R & M) assets to Sunoco Logistics might justify a finding that the historic unit is no longer appropriate. See *Lennox Industries, Inc.*, 308 NLRB 1237, 1238 (1992). It is unnecessary to reach this issue in view of my finding that the two companies do not constitute a single employer.

relations, and (4) interrelation of operations. *Mercy General Health Partners Amicare Homecare*, 331 NLRB 783, 784-785 (2000); *Dow Chemical Co.*, 326 NLRB 288 (1998). The most important of these factors is control over labor relations. *Mercy General Health Partners Amicare Homecare*, above at 785. Common ownership, while significant, does not by itself establish a single employer relationship; a single employer will be found only where one entity exercises actual or active control over the day-to-day operations or labor relations of the other. *Mercy Hospital of Buffalo*, 336 NLRB 1282, 1283-1284 (2001); *Mercy General Health Partners Amicare Homecare*, above. The fundamental inquiry in assessing single employer status is whether there exists overall control of critical matters at the policy level. *Proctor Express Inc. of New Jersey*, 322 NLRB 281, 289-290 (1996), enfd. 135 F.3d 766 (3d Cir. 1997); *Pathology Institute, Inc.*, 320 NLRB 1050, 1063 (1996), enfd. 116 F.3d 482 (9th Cir. 1997), cert. den. 522 U.S. 1028 (1997). The party asserting the existence of a single employer relationship has the burden of proof on this issue. *Dow Chemical Co.* above at 288, fn. 4.

IV. **FACTS**

Ownership

As discussed above, Sunoco, Inc. (R & M) is a wholly-owned subsidiary of Sunoco, Inc. Sunoco Partners is a limited liability company owned by subsidiaries of Sunoco, Inc., including Sunoco (R & M). Sunoco Logistics and Sunoco Partners were both created in October 2001.

In February 2002, when ownership of Sunoco (R & M) pipelines and terminals was transferred to Sunoco Logistics, Sunoco, Inc. and/or Sunoco (R & M) received in return an approximately 73 percent limited partnership interest and a two percent general partnership interest in Sunoco Logistics, as well as certain other considerations. Sunoco, Inc. subsequently sold some of its limited partnership interest and presently controls about 62 percent of the partnership shares of Sunoco Logistics.⁷ The remainder is owned by the other purchasers of the shares.

Sunoco Logistics has no officers, directors, or employees. Sunoco Partners manages the Sunoco Logistics pipelines and terminals and employs the individuals who work at those facilities. Sunoco Partners' only business is the management of Sunoco Logistics' operations, and it is liable as general partner for Sunoco Logistics' debts to the extent they can not be satisfied from Sunoco Logistics' assets. Revenue received by Sunoco Logistics is used to cover the expenses incurred by Sunoco Partners in operating the Sunoco Logistics pipelines and terminals.

Sunoco Logistics' income and expenses are reported on Sunoco, Inc.'s financial statements. Sunoco Logistics issues its own Annual Report and makes separate filings with the Securities Exchange Commission.⁸ Sunoco Logistics also has a separate budget and its own bank accounts and Finance Department.

⁷ This figure is derived from corporate documents for the year 2004. An employer witness testified, however, that Sunoco Inc. owned 49 percent of the Sunoco Logistics shares at the time of the hearing.

⁸ Sunoco (R & M) and Sunoco Partners are not required to issue Annual Reports or file with the SEC.

Management

John Drosdick is the President, Chief Executive Officer, and Chairman of the Board of Directors of Sunoco, Inc. Drosdick also serves as the Chairman of Sunoco Partners' Board of Directors. None of the other Sunoco Partners' Directors serves on the Sunoco, Inc. Board of Directors, but five of the Sunoco Partners' nine Directors are officials of Sunoco, Inc.⁹ The four remaining Directors have no apparent connection with Sunoco, Inc. or any of its other affiliates.

Deborah Fretz is Sunoco Partners' President and Chief Executive Officer. She reports to Drosdick and the Sunoco Partners' Board of Directors. Fretz is responsible for the management of Sunoco Partners and can approve acquisitions by Sunoco Logistics valued up to \$10 million per transaction and \$50 million per year; transactions involving larger amounts must be approved by the Sunoco Partners' Board of Directors. The officers of Sunoco, Inc. and Sunoco Partners are separate with the exception of Paul Mullholland, who serves as the Treasurer for both entities.

Fretz sets labor policy for Sunoco Partners with assistance from Sunoco Partners' Human Resources Director Margaret Sofio. Kimberlee Kanazeh is a Human Resources Representative for Sunoco Partners. The role of the Sunoco Partners' Board of Directors in the labor relations area is limited to setting compensation for Fretz and other executives. Neither Fretz nor any other Sunoco Partners' managers currently exercises control over Sunoco (R & M) employees or operations.¹⁰

David Chalson, Sunoco Partners' Manager of Marketing and Terminal Operations, manages the terminal operations. Chalson reports to Sunoco Partners Vice President of Eastern Operations David Justin, who reports to Fretz.

The Drivers and Mechanics continue to work for Sunoco (R & M) and are included within its Transportation Department, which is managed by Transportation Manager William Marchbank. Marchbank does not report, either directly or indirectly, to Chalson, Justin, or Fretz. Ruth Clauser is Sunoco (R & M)'s Human Resources Representative.

Interrelation of Operations

As previously noted, Sunoco Logistics owns pipelines and terminals, and Sunoco Partners manages them. Sunoco (R & M) uses the Sunoco Logistics pipelines and terminals to transport and store petroleum products and pays a fee to Sunoco Logistics for this privilege. The amounts paid by Sunoco (R & M) for its use of Sunoco Logistics' facilities are comparable to payments made by unrelated third parties. Between 92 percent and 95 percent of the product

⁹ In addition to Drosdick, they are Sunoco, Inc. Vice-Presidents Cynthia Archer, Michael Dingus, Bruce Fisher, and Thomas Huffman.

¹⁰ Sunoco Partners' management exercised control over the activities of the Sunoco (R & M) employees assigned to work from Sunoco Logistics terminals until sometime in late 2003. Sunoco (R & M) has now assumed responsibility for the supervision of these employees.

stored in Sunoco Logistics' terminals is owned by Sunoco (R & M). The remainder is owned by third parties unrelated to Sunoco, Inc. or its subsidiaries.

The Terminal Operators included in the bargaining unit are employed by Sunoco Partners, and the Drivers and Mechanics are employed by Sunoco (R & M). The Drivers pick up Sunoco (R & M) products at Sunoco Logistics' terminals for delivery to Sunoco (R & M) customers. The Terminal Operators dispense the product to the Drivers. As a consequence, there is regular contact between the two groups of employees. Their interactions are similar to the contact which the Terminal Operators have with the drivers employed by unrelated third parties who use Sunoco Logistics' storage facilities.

Prior to February 2002, when all unit employees worked for Sunoco (R & M), the Terminal Operators performed various functions related to the work of the Drivers. The Terminal Operators assisted with Driver dispatch, interacted with the retail outlets to which Drivers delivered product, entered information from Driver timesheets into the Sunoco (R & M) payroll system, and prepared reports on the deliveries made by Drivers. During the period immediately following Sunoco Logistics' acquisition of the Sunoco (R & M) terminals, the Terminal Operators continued to perform dispatch and other functions related to the work of the Drivers, and Sunoco (R & M) paid for these services in accordance with a fee schedule established by the parties. During this transition period, managers employed by Sunoco Partners continued to supervise the Drivers' work performance.

By the fall of 2003, Sunoco (R & M) had hired managers to supervise its Drivers and Mechanics, and Sunoco Partners ceased exercising control over Sunoco (R & M) employees. Sunoco (R & M) also phased out its reliance on the Terminal Operators to perform dispatch and other functions for the Drivers. Terminal Operators continue to input Driver payroll information at some terminals, and Sunoco (R & M) pays for this service, but Terminal Operators no longer perform any other functions for Sunoco (R & M) in connection with the work performed by the Drivers.

At the time of its creation, Sunoco Logistics entered into an agreement to have Sunoco Inc. perform certain functions in return for a set fee. The functions include processing Sunoco Partners' payroll, handling materials procurement, and providing information technology and accounting services. The agreement expires in 2007, and Sunoco Partners and Sunoco Logistics will be free at that time to determine whether they wish to continue using Sunoco, Inc. to perform these services or to have them performed by alternative sources.

Sunoco Logistics rents space in the Sunoco, Inc. headquarters building at which Sunoco Partners maintains its principal offices. Sunoco (R & M) leases office areas at some of the Sunoco Logistics terminals, but these office areas are separate from the office areas occupied by Sunoco Partners and Sunoco Logistics. Both Sunoco (R & M) Drivers and drivers employed by unrelated third parties are permitted to use locker room facilities at the terminals.

Pursuant to an agreement with Sunoco Logistics, Sunoco, Inc. may request that Sunoco Logistics acquire particular assets. If such a request is made, Sunoco Partners is required to determine whether the acquisition would be beneficial, and if so Sunoco Logistics would be

obliged to purchase the assets. Sunoco Logistics' 2004 filing with the SEC at several points describes agreements with Sunoco (R & M) as providing for payments "comparable to those charged in arms-length third party transactions," thereby suggesting that dealings between Sunoco Logistics and Sunoco (R & M) are not "arms-length." On at least one occasion, however, Sunoco (R & M) has declined to enter into an agreement to use Sunoco Logistics facilities because it believed it could obtain a better deal elsewhere, indicating that interactions between the two companies may in fact be at arms-length. Similarly, Sunoco (R & M) has ceased its use of Sunoco Partners Terminal Operators to perform certain functions based on its conclusion that the functions could be performed at a lower cost by Sunoco (R & M) employees.

Control Over Labor Relations

Since late in 2003, employees of Sunoco (R & M) and employees of Sunoco Partners have been separately supervised. Sunoco (R & M) and Sunoco Partners have separate Human Relations Departments which set distinct labor relations policies for their respective companies. While the policies applied by Sunoco Partners are based on the policies followed by Sunoco (R & M) prior to Sunoco Partners' creation, Sunoco Partners has modified these policies to suit its needs.

Grievances filed by Terminal Operators employed by Sunoco Partners are handled by Sunoco Partners managers, while grievances filed by unit employees who work for Sunoco (R & M) are processed by a different set of managers employed by Sunoco (R & M). Since employees of the two companies are presently included in the same unit, representatives of both Sunoco Partners and Sunoco (R & M) participated in the 2004 negotiations for a new contract. However, each of the companies set its own negotiating goals and strategies.

The collective-bargaining agreement currently covering the Terminal Operators, Drivers, and Mechanics permits employees to apply for any open positions within the bargaining unit. As a consequence, employees sometimes switch classifications, with Drivers becoming Terminal Operators and Terminal Operators becoming Drivers.¹¹ The agreement also permits laid off employees to bump less senior employees in other classifications, although there is no evidence that this has ever occurred.

Sunoco Partners Terminal Operators are allowed by contract to work as Drivers on their days off, and 10 of the current Terminal Operators took advantage of this opportunity during the period from March 2004 through April 2005. Individual Terminal Operators spent as few as one day and as many as 49 days working as Drivers during this period. The employees are paid by Sunoco (R & M) when serving as Drivers and by Sunoco Partners when working as Terminal Operators.

The Terminal Operators and the Drivers and Mechanics are all covered by Sunoco, Inc. benefit plans. Until recently, a small number of employees were classified as combination

¹¹ The record does not indicate how many employees have switched jobs since Sunoco (R & M) began supervising its own employees in late 2003.

Terminal Operator/Drivers, but these combination jobs were eliminated when Sunoco (R & M) assumed control over its own workforce.¹²

V. ANALYSIS

Initially, I find that Sunoco Partners and Sunoco Logistics constitute a single employer. Sunoco Partners is wholly owned by Sunoco, Inc. subsidiaries, which also own a major interest in Sunoco Logistics. They are commonly managed since Sunoco Partners manages the Sunoco Logistics' operations. All of the employees working on Sunoco Logistics pipelines and terminals work for Sunoco Partners, showing common control over labor relations. Additionally, the operations of the two entities are completely integrated since Sunoco Partners exists for the sole purpose of overseeing Sunoco Logistics' operations. In short, all of the factors required for a single employer finding are present.

Some factors suggest that Sunoco Logistics and Sunoco Partners should also be viewed as a single employer with Sunoco (R & M). Thus, Sunoco Logistics, Sunoco Partners, and Sunoco (R & M) are all owned, directly or indirectly, by Sunoco, Inc. There is also some integration of operations. Most of the product stored at Sunoco Logistics' terminals, for instance, is owned by Sunoco (R & M). Sunoco (R & M) Drivers visit the terminals on a daily basis to pick up product, and they interact with the Sunoco Partners Terminal Operators in the process. Sunoco (R & M) leases office space at the terminals, and Sunoco Partners leases space at Sunoco, Inc. headquarters. Sunoco Partners and Sunoco Logistics pay Sunoco, Inc., to provide ancillary services such as payroll, material procurement, and accounting. Sunoco Partners Terminal Operators and Sunoco (R & M) Drivers have a contractual right to bid on each other's jobs, and some of the Terminal Operators work for Sunoco (R & M) as Drivers outside of their regular working hours.

The Board has made clear, however, that common ownership is not by itself sufficient to establish the existence of a single employer. *Mercy Hospital of Buffalo*, above. Similarly, the fact that one entity provides services for another does not indicate the existence of a single employer relationship so long as the services are paid for by the recipient. *Mercy General Health Partners Amicare Homecare*, above; *Dow Chemical Co.*, above. In this case, payments are made in each instance where services or products are exchanged between Sunoco (R & M) and Sunoco Partners/Sunoco Logistics. It is true that some language in Sunoco Logistics' SEC filings might be read as suggesting that the payments are not the result of arms-length transactions, but the filings make clear that the amounts exchanged are comparable to what third parties are asked to pay. Further, there have been instances in which Sunoco (R & M) has

¹² As noted above, one of the individuals presently employed by Sunoco (R & M) is classified as a Terminal Operator even though he does not perform Terminal Operator functions. This individual works at a terminal which was once owned by Sunoco (R & M) and sold to an unrelated third party prior to the creation of Sunoco Partners. Sunoco (R & M) has continued to store product at the terminal following the sale, but it no longer has any need for a Terminal Operator at the site since the purchaser has assumed responsibility for running the facility. Rather than move the erstwhile Terminal Operator into a different classification, however, Sunoco (R & M) has allowed him to keep his classification while assigning him other duties. No party contends that this employee should be removed from the bargaining unit.

declined to use services provided by Sunoco Partners/Sunoco Logistics, thereby indicating that dealings between the two companies are at arms-length.

The interchange between the Sunoco (R & M) Drivers and Sunoco Partners/Sunoco Logistics Terminal Operators originated when the two groups were both employed by Sunoco (R & M) and continued only because it was required by the collective-bargaining agreement negotiated before the creation of Sunoco Partners and Sunoco Logistics. Interchange under these circumstances merely demonstrates the reluctance of the employers to abandon their contractual commitments and does not show that Sunoco (R & M) and Sunoco Partners/Sunoco Logistics function as a single enterprise.

Further, even if the integration of operations in this case is considered significant, it would not be enough to produce a finding of single employer. Single employer status will be found only where there is common control of day-to-day management and labor relations. *Mercy General Health Partners Amicare Homecare*, above; *Mercy Hospital of Buffalo*, above; *Alabama Metal Products, Inc.*, 280 NLRB 1090, fn. 1 (1986). In this case, the evidence indicates that day-to-day management at Sunoco (R & M) and Sunoco Logistics/Partners is separate and that the two entities each set their own labor policies.

Sunoco Partners has a President and Chief Executive Officer who exercises substantial control over the Sunoco Partners/Sunoco Logistics operation and has no control over the activities of Sunoco (R & M). While the Sunoco Partners President reports to a Board of Directors that is chaired by Sunoco, Inc.'s President and includes some Sunoco, Inc. officers, the Directors' role appears limited to approving major capital allocation decisions and establishing executive compensation. There is no evidence that Directors participate in the day-to-day management of Sunoco Partners' operations or labor relations. Absent evidence that common officers or directors exercise actual control over subsidiary operations, the Board will not find single employer status. *Dow Chemical Co.*, above at 288-289.

Sunoco Partners and Sunoco (R & M) also have separate Human Resources Departments and distinct labor relations policies. It is true, as the Union Involved asserts, that the Sunoco Partners policies are based on Sunoco (R & M) policies in existence at the time Sunoco Partners was created, but the policies have since been modified to suit Sunoco Partners Logistics' needs. As for the fact that the most recent contract negotiations were conducted jointly by Sunoco Partners and Sunoco (R & M), this was a matter of necessity since employees from the two companies were included in the same bargaining unit and the Union Involved refused to agree to separate bargaining. Further, the companies set their own bargaining strategies, and the processing of grievances filed by unit employees is handled separately depending on whether they work for Sunoco (R & M) or Sunoco Partners. In short, I find that the critical factors of common management and centralized control of labor relations are absent and that the two entities do not therefore constitute a single employer. *Mercy Hospital of Buffalo*, above; *Mercy General Health Partners Amicare Homecare*, above.¹³

¹³ *Beverly Health and Rehab Center-Paradise Pines*, 341 NLRB 296, 306-307 (2004), cited by the Union Involved, is distinguishable. The separate companies involved in that proceeding had common ownership, officers, and directors, shared some premises and facilities, provided services for each other and held themselves out to the public as related enterprises. More significantly, the evidence showed that

As Sunoco (R & M) and Sunoco Logistics/Sunoco Partners are separate employers, a unit including the Sunoco (R & M) employees in the same unit with employees employed by Sunoco Partners would be appropriate only if all parties consented. *Oakwood Care Center*, above. Assuming arguendo that the employers are joint employers, they do not consent. The Union Involved contends that this petition should have been filed in 2002 when Terminal Operators were first placed on the Sunoco Partners' payroll and that by waiting until the contract expired in 2004 to raise the issue, the employers implicitly consented to bargaining on a multi-employer basis. The Union Involved asserts that the Employers thereby waived any right to contend that the unit should be divided. This argument ignores the existence of a transition period during which Sunoco Partners/Sunoco Logistics personnel continued to supervise Sunoco (R & M) employees. Sunoco (R & M) did not begin separately supervising its Drivers and Mechanics until late in 2003, shortly before bargaining for a new contract began. An employer does not waive its right to argue that organizational changes have altered an existing unit by waiting for the expiration of the contract in effect at the time the changes take place. See *Ameron, Inc.*, 288 NLRB 747, 748-749 (1988); *Rock-Tenn Co.*, 274 NLRB 772 (1985). I shall, therefore, clarify the existing bargaining unit into two units, one consisting of the Terminal Operators and Warehouse employees employed by Sunoco Partners and the second consisting of Drivers, Mechanics, Terminal Operators, Leadpersons, and Warehouse employees employed by Sunoco (R&M).

VI. CONCLUSIONS

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer/Petitioner is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Union Involved is a labor organization within the meaning of the Act.
4. The bargaining unit currently represented by the Union Involved shall be clarified as requested by the Employer/Petitioner.

the companies had substantially similar personnel policies and procedures, some of which were mandated by a parent company, and that the parent company's labor relations department provided assistance to all of the subsidiary companies on significant union-related matters. Thus, unlike this case, the separate companies had common control over labor relations.

ORDER

IT IS HEREBY ORDERED that the bargaining unit represented by the Union Involved is clarified into two units, both of which shall continue to be represented by the Union Involved. One unit shall consist of the Terminal Operators and Warehouse employees employed by Sunoco Partners LLC at the 15 terminals at which unit employees are currently employed. The second unit shall consist of Drivers, Mechanics, Terminal Operators, Leadpersons, and Warehouse employees employed by Sunoco, Inc. (R&M) at the same 15 terminals.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. Upon the filing of such request for review, the filing party shall serve a copy of the request on the other parties and shall file a copy with the Regional Director either by mail or by electronic filing to Region4@nrlrb.gov.¹⁴ A request for review may also be submitted by e-mail. For details on how to file a request for review by e-mail see <http://gpea.NLRB.gov/>. The request for review must be received by the Board in Washington by 5:00 p.m., EDT on **August 31, 2006**.

Signed: August 17, 2006

at Philadelphia, PA

/s/ [Dorothy L. Moore-Duncan]

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four
National Labor Relations Board

¹⁴ See OM 05-30, dated January 12, 2005, for a detailed explanation of requirements which must be met when electronically submitting representation case documents to the Board or to a Regional Office's electronic mailbox. OM 05-30 is available on the Agency's website at www.nrlrb.gov.